

**KIM MANARD-HENKELMAN and
SARAH McDANIEL,**

Plaintiffs,

V.

THE PORT OF MUSKOGEE, et al.,

Defendants.

Case No. CIV-17-441-RAW

ORDER

Before the court is the plaintiffs' objection to the Findings and Recommendation of the United States Magistrate Judge. The Magistrate Judge recommended that defendants' motion to dismiss plaintiffs' claims as a discovery sanction be granted, and that the dismissal be with prejudice.

This court, as did the Magistrate Judge, has considered the factors set forth in *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir.1992). These do not represent a rigid test that a district court must always apply, but are rather a non-exclusive list of sometimes-helpful criteria which the district court may wish to consider in the exercise of what must always remain a discretionary function. *See Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1323 (10th Cir.2011). “It is within a court’s discretion to dismiss a case if, after considering all the relevant factors, it concludes that dismissal alone would satisfy the interests of justice.” *Gripe v. City of Enid, Okl.*, 312 F.3d 1184, 1188 (10th Cir.2002). “Dismissing a case with prejudice serves at least two purposes. It penalizes the party whose conduct warrants the

sanction and discourages ‘those who might be tempted to such conduct in the absence of such a deterrent.’” *Jones v. Thompson*, 996 F.2d 261, 266 (10th Cir.1993)(citation omitted).

The court has reviewed the record and hereby affirms and adopts the Findings and Recommendation.

It is the order of the court that the Findings and Recommendation (#61) is affirmed. The motion to dismiss (#48) is hereby granted and this action is hereby dismissed with prejudice. All other pending motions are deemed moot.

ORDERED THIS 2nd DAY OF OCTOBER, 2018.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE